

June 15, 2017

**SUBMITTED ELECTRONICALLY
HARD COPY TO FOLLOW BY U.S. MAIL**

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460

**Re: Freedom of Information Act Request for Records Related to Executive Order 13777,
Enforcing the Regulatory Reform Agenda, or to Administrator Pruitt's March 24,
2017 Memorandum on Executive Order 13777.**

Dear National Freedom of Information Act Officer,

On behalf of the Clean Air Task Force ("CATF"), I write to request disclosure of records¹ pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and applicable Environmental Protection Agency ("EPA" or "Agency") regulations, 40 C.F.R. §§ 2.100-2.406.

I. Description of Records Sought

By May 25, 2017, the EPA Regulatory Reform Task Force ("Task Force") - as defined in Administrator E. Scott Pruitt's, March 24, 2017 Memorandum entitled "Executive Order 13777: Enforcing the Regulatory Reform Agenda" ("Pruitt Memo") - "shall provide a report to [Administrator Pruitt] detailing the agency's progress toward the following goals (i) improving implementation of regulatory reform initiatives and policies...; and (ii) identifying regulations for repeal, replacement, or modification," (hereinafter "Report"). Exec. Order 13777, § 3(g) (Feb. 24, 2017).

CATF seeks all records in EPA's possession, custody, or control pertaining development of the Report, along with the Report itself, and any documents that were submitted to Administrator Pruitt in conjunction with the Report.²

¹ CATF requests records as that term is defined at 5 U.S.C. § 552(f)(2), or its singular form in the text of FOIA, including but not limited to correspondence, minutes of meetings, meeting invitations, memoranda, notes, emails, texts, notices, facsimiles, charts, tables, presentations, orders, filings, or other writings (whether handwritten, typed, electronic, or otherwise produced, reproduced or stored).

² This request build on the request CATF submitted on May 18, 2017, seeking all records in EPA's possession, custody, or control pertaining to the creation, formation, or ongoing activities, of the Task Force, as well as the development of the Report (Tracking No. EPA-HQ-2017-007501). To date, CATF has not received any records associated with this request. In accordance with 5 U.S.C. § 552(a)(6)(A)(i), the records are due today: June 16, 2017.

Such records include but are not limited to:

1. The Report;
2. Records created by the Task Force related to the Report or its creation;
3. Records submitted to Administrator Pruitt in conjunction with the Report.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide CATF with an explanation for each such record, or portion thereof, sufficient to identify the record and the exemption(s) claimed.

The prompt and complete response to this request is critical to the public's understanding of the workings of government, and to the Agency's actions related to its mandate to protect and preserve the public health and welfare. For these reasons, we respectfully urge EPA to respond to this request in the 20-working-day timeframe provided under 5 U.S.C. § 552(a)(6)(A)(i).

CATF also requests that EPA produce these records on a rolling basis. For ease of administration and to conserve resources, CATF will accept documents produced in readily accessible electronic format provided to the email address provided at the signature block herein. Additionally, if a record is available to the public online, an URL disclosing its location is sufficient. Please do not allow EPA's search for, or deliberations concerning, certain records delay the production of others that the Agency has already retrieved and determined to produce.

II. Request for a Fee Waiver

"Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2013); *see also NRDC v. EPA*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). CATF will serve the public interest by reviewing and analyzing the records received under this request, and disseminating our analyses and/or disclosing the records themselves or the information they contain, to the public as described further herein, so that the public may be informed about the process and the details of the government's consideration of which public health and environmental regulations to repeal, replace or modify, and the asserted basis for each such recommended change.

CATF requests that EPA waive any fee that it would otherwise charge for search and production of the records described above. FOIA provides that records responsive to a request "shall be furnished without any charge...if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). CATF's request more than meets these requirements.

A. Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government.

The records requested here are "likely to contribute significantly to public understanding of the operations or activities of the government," 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1).

1. Subject of the request

The subject of the request concerns “the operations or activities of the federal government.” 40 C.F.R. § 2.107(l)(2)(i). The records requested relate to a regulatory reform report by an Executive Branch Task Force on Regulatory Reform. To our knowledge, the Task Force is staffed entirely by federal government employees. The Report will advise the EPA Administrator which regulations, promulgated under statutes the Agency is responsible for implementing, should be considered for repeal, replacement or modification. As such the Report and all records related to the Report’s development should be publicly available.

The records requested will provide CATF, and by extension, the public with valuable information about the process by which the Agency is considering which public health and environmental regulations to repeal, replace or modify, and the asserted basis for each such recommendation. While the Agency has created a docket for the public comment period associated with development of the Report, Evaluation of Existing Regulations, 82 Fed. Reg. 17,793 (Apr. 13, 2017) (opening Docket No. EOA-HQ-OA-2017-0190, *available at*: <https://www.regulations.gov/docket?D=EPA-HQ-OA-2017-0190>), the records requested here go beyond those likely to be made available on the docket.

2. Informative value of the information to be disclosed

The records will provide valuable information to the public regarding the contents and recommendations of the Task Force’s Report – a report the public has shown significant interest in and concern over.³ Specifically, the records are likely to show the degree to which the Task Force is properly heeding advice from its expert agency staff or whether it is being influenced by the regulated industries.

“[T]he disclosure is ‘likely to contribute’ to an understanding of government operations,” [will be] “meaningfully informative,” and the records requested are not already available in the public domain. 40 C.F.R. § 2.107(l)(2)(ii).

The Agency has already begun rescinding, revising, delaying or reassessing many regulations critical to environmental protection and public health.⁴ The Task Force’s Report is meant to provide Administrator Pruitt with details on its progress toward improving regulatory reform initiatives and identifying additional regulations for repeal, replacement or modification.

³ See Brady Dennis, “EPA asked the public which regulations to gut – and got an earful about leaving them alone,” WASH. POST (May 16, 2017), *available at*: https://www.washingtonpost.com/news/energy-environment/wp/2017/05/16/epa-asked-the-public-which-regulations-to-gut-and-got-an-earful-about-leaving-them-alone/?utm_term=.6a8d2d56e189.

⁴ See e.g., Timothy Cama, “EPA Delays Obama Air Pollution Rule by One Year,” THE HILL (June 6, 2017), *available at*: <http://thehill.com/policy/energy-environment/336663-epa-delays-obama-air-pollution-rule-deadline-by-one-year>; Emily Holden, “Clean Power Plan: Details Emerge about Trump’s Planned Rollback,” CLIMATEWIRE (June 12, 2017), *available at*: <https://www.eenews.net/stories/1060055877>; Juliet Eiperin, “Trump Administration Delays Rules Limiting Methane Emissions,” WASH. POST (June 14, 2017), *available at*: https://www.washingtonpost.com/politics/trump-administration-delays-rules-limiting-methane-emissions/2017/06/14/0e7d50fa-512b-11e7-be25-3a519335381c_story.html?utm_term=.61e43495a627.

Press reports suggest that political appointees in the Agency and serving on the Task Force may minimize or disregard input from its expert staff.⁵ Further press reports suggest that the Administrator is unduly influenced by the regulated industries.⁶

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

The disclosure of the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” 40 C.F.R. § 2.107(l)(2)(iii). CATF regularly engages in dissemination of information to the public, as described more fully below. Additionally, informing the public about the Agency’s ongoing regulatory reform efforts is particularly urgent. CATF also works closely with numerous state, regional, and national non-profit organizations that have as part of their mission dissemination of information about public health and environmental regulations, as well as government oversight. Our receipt, analysis and distribution of the information contained in the records sought, will allow the public to be able fully to understand the underlying reasons and process for the Agency’s regulatory actions.

CATF engages multiple channels to distribute information to the public, including our website,⁷ and through press releases,⁸ blog posts,⁹ white papers, active engagement on social media,¹⁰ and by

⁵ See e.g., Coral Davenport, “EPA Workers Try to Block Pruitt in Show of Defiance,” N.Y. TIMES (Feb. 16, 2017), available at: <https://www.nytimes.com/2017/02/16/us/politics/scott-pruitt-environmental-protection-agency.html>; David Schultz, “Is EPA Moving Too Fast on Deregulation to Listen to the Public?” BLOOMBERG (May 7, 2017), available at: <https://www.bna.com/epa-moving-fast-n73014450567/>.

⁶ See e.g., John McQuaid, “Trump Officials Act to Tilt Federal Science Boards Toward Industry,” Scientific American (May, 16, 2017), available at: https://www.scientificamerican.com/article/trump-officials-act-to-tilt-federal-science-boards-toward-industry/?WT.mc_id=SA_TW_POLE_NEWS&sf79172482=1; Brady Dennis & Steven Mufson, “Thousands of Emails Detail EPA Head’s Close Ties to Fossil Fuel Industry,” WASH. POST (Feb. 22, 2017), available at: https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm_term=.6f98e9c506b9.

⁷ Over the last 12 months the CATF website (www.catf.us) has been viewed 88,955 times.

⁸ See e.g., Press Release, “Statement of Conrad Schneider, Advocacy Director, Clean Air Task Force on the nomination of Scott Pruitt for EPA Administrator,” (Feb. 17, 2017), available at: http://catf.us/newsroom/releases/2017/20170217-CATF_Schneider_Statement_on_Pruitt_Nomination.pdf; Press Release, “Statement of Conrad Schneider, Advocacy Director, Clean Air Task Force on Proposed Trump Administration EPA Budget ‘Will Make America Gag Again,’” (Mar. 16, 2017), available at: http://catf.us/newsroom/releases/2017/20170316-Statement_of_Conrad_Schneider_Advocacy_Director_Clean_Air_Task_Force_on_Proposed_Trump_Administration_EPA_Budget.pdf; Press Release, “CATF Climate Executive Order Press Statement,” (Mar. 28, 2017), available at: http://catf.us/newsroom/releases/2017/20170328-CATF_Climate_Executive_Order_press_statement.pdf; Press Release, “CATF Statement on EPA Regulatory Reform,” (May 4, 2017), available at: http://catf.us/newsroom/releases/2017/20170504-CATF_statement_on_EPA_Regulatory_Reform.pdf.

⁹ See e.g., Ann Weeks, Legal Director, “Not So Fast, Mr. Trump,” (Mar. 28, 2017), available at: <http://www.catf.us/blogs/ahead/2017/03/28/not-so-fast-mr-trump/>; David McCabe, Atmospheric Scientist, “Science 101 for Administrator Pruitt,” (Apr. 21, 2017), available at: <http://www.catf.us/blogs/ahead/2017/04/21/science-101-for-administrator-pruitt/>.

¹⁰ <https://www.facebook.com/cleanairtaskforce/>; <https://twitter.com/cleanaircatf>.

providing major media outlets with data, resources and interviews.¹¹ CATF, therefore, is well positioned to disseminate information found in the records received as well as potentially also the records themselves and/or CATF's summary and analysis of those records, with our partner and client groups as well as our media contacts.

CATF staff regularly gathers information from a variety of sources – including documents provided pursuant to FOIA requests – to write original articles and reports that are featured on the CATF website, in blogs, and on other media outlets. *See Cause of Action v. FTC*, 961 F. Supp. 2d. 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media requester status if it “distributes work to an audience and is especially organized around doing so”). CATF seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

4. Significance of the contribution to public understanding.

“The disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.” 40 C.F.R. § 2.107(l)(2)(iv). The records will provide significant insight into the contents and recommendations within the Report. Currently the public does not have access to information regarding the advice the Task Force gathered and its recommendations to the Administrator.

5. Not in the Commercial Interest of the Requester.

CATF is a § 501(c)(3) not-for-profit, organized under the laws of the Commonwealth of Massachusetts. As such, CATF does not have “a commercial interest that would be furthered by the requested disclosure.” 40 C.F.R. § 2.107(l)(1). Our mission is to help safeguard against the worst impacts of climate change by catalyzing the rapid global development and deployment of low carbon energy and other climate-protecting technologies through research and analysis, public advocacy leadership, and partnership with the private sector.

B. Willingness to Pay Fees Under Protest.

Please provide the records described above regardless of your evaluation of CATF's fee category assertion and fee waiver request. To prevent delay in EPA's provision of the requested records, CATF states that it will, if necessary, and under protest, pay fees in accordance with 40 C.F.R. § 2.107(c)(iv). Please consult with me, however before undertaking any action that would cause the fee to exceed \$500.00. Such payment will not constitute any waiver of CATF's right to seek administrative or judicial review of any denial of its fee waiver request and/or rejection of its fee category assertion.

¹¹ *See e.g.*, Hannah Hess & Ellen M. Gilmer, “Greens plan legal battle, protest in the wake of Trump's order,” E&E NEWS (Mar. 29, 2017), available at: <https://www.eenews.net/eenewspm/2017/03/29/stories/1060052306>; Staff, “The EPA's changing mission, explained,” THE WEEK (Apr. 15, 2017), available at: <http://theweek.com/articles/691890/epas-changing-mission-explained>; Michael Bloomberg, “Trump's Promise to Bring Back Coal is Worse than a Con,” WASH. POST (May 2, 2017), available at: https://www.washingtonpost.com/opinions/trumps-promise-to-bring-back-coal-jobs-is-worse-than-a-con/2017/05/02/8aec0b4-2e91-11e7-8674-437ddb6e813c_story.html?utm_term=.c42815839e6e.

Please do not hesitate to call or email me with any questions. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'JP Duffy', with a stylized, overlapping 'D' and 'U'.

James P. Duffy
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